



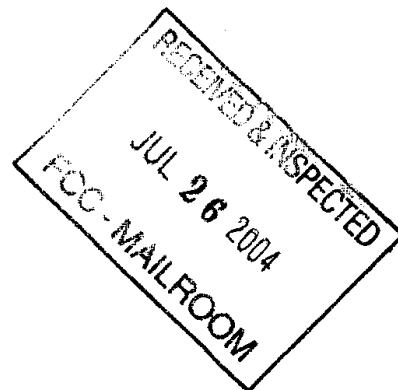
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**ORIGINAL**

July 23, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554



RE: Ex Parte – CC Docket Nos. 96-98, 98-147 and 01-338

Dear Ms. Dortch:

Please find enclosed a letter that was sent to Chairman Powell on today's date. Please place it on the record in the above referenced proceedings.

This letter was originally overnighted to you on July 20<sup>th</sup>, however, the wrong overnight address was used and the package was refused at the 12<sup>th</sup> Street address.

If you have any questions, please contact me at 319-790-6823.

Sincerely,

Robin R. McVeigh  
Paralegal

Encl.

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July 20, 2004

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FCC - MAILROOM

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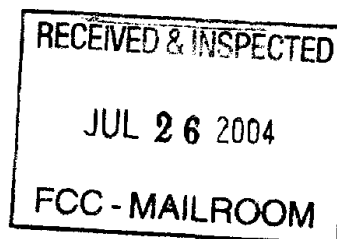
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McLeodUSA

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July 20, 2004

The Honorable Michael K. Powell  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554



Dear Chairman Powell:

As Chairman and Chief Executive Officer of McLeodUSA Incorporated, I write in support of your goal for a timely release of the Order on Interim Rules and adoption of Permanent Unbundling Rules by year-end. In my June 23 letter to you, I detailed key long-term principles necessary in order for sustainable facilities-based competition to survive. The principles must be recognized and implemented in the short-term Interim Rules as well as long-term Permanent Rules. In addition, while we recognize and appreciate your goal of implementing Permanent Rules prior to the expiration of the Interim Rules, we strongly encourage the FCC to provide specific guidance if this goal is not accomplished. Clarity and predictability are critical for sustainable facilities-based competition in this industry.

For these reasons, we encourage the FCC to adopt the following key principles in its Order on Interim Rules.

**First, the FCC should explicitly prohibit retroactive price true-ups following the 6-month Interim Rules period.** The RBOCs pronounced their commitments of rate stability through at least year-end, and this commitment cannot be allowed to become illusory through any type of retroactive true-up, even if the Interim Rules 6 month period extends into the first quarter of next year. To allow the RBOCs to impose retroactive price increases following the Interim Rules period would be wholly unfair to competitive carriers such as McLeodUSA, creating a significant cash risk and, as a publicly traded company, a significant financial reporting risk.

**Second, the FCC must address batch hot cut (BHC) issues in the Notice of Proposed Rulemaking (NPRM) attached to the Order on Interim Rules.** Specifically, we encourage the FCC to define federal guidelines for batch hot cut requirements in the Permanent Unbundling Rules and to provide preliminary guidance for batch hot cuts in the NPRM. The batch hot cut process must be affordable, operationally efficient and supported by minimum federal standards to ensure consistency across markets. States may then apply these standards similar to the 271 long-distance checklist framework. In the area of operational performance, the Bells must accurately and efficiently switch large volumes of customers to facilities-based competitive providers that use unbundled loops at a reasonable charge.

**Third, if Interim Rules expire prior to the adoption of Permanent Rules, we support the FCC providing separate rules in its Order on Interim Rules for DS0 loops, UNE-P and high-capacity loops and transport in the interim between expiration of Interim Rules and the adoption of Permanent Rules.** Consistent with the FCC's unanimous view in the Triennial Review Order that loops remain UNEs, we encourage the FCC to clearly state that DS0 loops for existing and new orders should remain UNEs at TELRIC pricing. There is no question that competitors will be impaired without continued access to the full functionality of DS0 loops at TELRIC for both existing and new customers.

Regarding UNE-P, we would not oppose a price increase (up to 15%) above current UNE-P pricing for all existing customers. We acknowledge that the FCC must require carriers to transition away from UNE-P under *USTA II*, and requiring commercial agreements for new customers is a reasonable step in that transition process. However, McLeodUSA urges the FCC to make it clear in its Order on Interim Rules that commercial agreements must not discriminate against facilities-based competition and that the RBOCs may not use their dominant market power for local switching to impose unreasonable conditions on commercial agreements, such as requiring a competitive carrier to accept higher UNE loop prices in exchange for a replacement UNE-P product.

McLeodUSA also believes that high capacity (DS1/DS3) loops and transport should remain a UNE after *USTA II*. The D.C. Circuit Court of Appeals did not address high capacity loops in its order. Moreover, evidence supplied in state TRO proceedings shows that McLeodUSA and other competitive carriers remain impaired without continued unbundled access to high-capacity transport in virtually every market where we serve small and medium business customers and residential consumers. The FCC should not preordain any outcome regarding whether DS1/DS3 loops and transport remain UNEs. Recognizing that this issue will be the subject of further discussion, however, McLeodUSA is willing to accept a temporary higher price (up to 15%) for both existing and new customers for high capacity loops and transport until Permanent Rules are adopted even though we continue to believe that McLeodUSA is impaired without access to those elements as UNEs. If Permanent Rules conclude that high capacity loops and transport remain UNEs, as we strongly believe they should, the rates should revert to TELRIC. However, we would support having no retroactive "true-up" thereby allowing the RBOCs to retain the temporary price difference. If Permanent Rules conclude, however, that competitive carriers are not impaired without access to high capacity loops and transport, retaining the "up to 15%" price increase for current customers and then requiring commercial agreements for these elements for new customers is reasonable. We believe it would also be reasonable for the RBOCs to be allowed retroactive price adjustments consistent with the commercial agreement pricing for new customers beginning on the date the Interim Rules expired. In addition, it is important that the Order on Interim Rules expressly reaffirm earlier FCC pronouncements that special access is not a wholesale service, but rather, a retail offering that existed prior to passage of the 1996 Act, thereby requiring the RBOCs to negotiate fair and reasonable wholesale pricing for commercial agreements.

Finally, as you know, McLeodUSA continues to actively engage in good faith negotiations to reach commercial arrangements with our RBOC suppliers. During this Interim Rules period,

we believe the RBOCs should not be able to invoke change of law provisions contained in our interconnection agreements. Requiring McLeodUSA and other competitive carriers to divert limited resources to arbitrate the interpretation of the D.C. Circuit's *USTA II* decision on a state-by-state basis prior to issuance of Permanent Rules will constrain our ability to successfully negotiate commercial agreements. Further, this same resource-consuming process would become necessary again after Permanent Rules are adopted. Consequently, we encourage the FCC to clearly and forcefully state its intention that all parties continue focusing on commercial negotiations while awaiting Permanent Unbundling Rules, and that reliance on change of law provisions is not appropriate at this time.

We look forward to working with you on these critical issues.

Sincerely,



Chris A. Davis  
Chairman and Chief Executive Officer

cc: Theodore J. Forstmann, Chairman of the Executive Committee  
Stephen C. Gray, President  
Honorable Kathleen Q. Abernathy  
Honorable Jonathan S. Adelstein  
Honorable Michael J. Copps  
Honorable Kevin J. Martin